

## **REMARKS**

### **Summary of the Office Action**

Claims 1, 2 and 5-9 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Cottingham (U.S. Patent No. 5,795,748) (hereinafter "Cottingham").

Claims 1, 2 and 5-7 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Root et al. (U.S. Patent No. 4,895,706) (hereinafter "Root").

Claims 3 and 4 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Krahn et al. (U.S. Pat. Pub. No. 2002/022274) (hereinafter "Krahn").

### **Summary of the Response to the Office Action**

Applicant has canceled claims 1-9 without prejudice for disclaimer. Applicant has added new independent claims 10-17 to differently describe embodiments of the disclosure of the instant application. Accordingly, claims 10-17 remain currently pending and under consideration.

### **Rejections under 35 U.S.C. § 102(b)**

Claims 1, 2 and 5-9 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Cottingham. Claims 1, 2 and 5-7 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Root. Claims 3 and 4 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Krahn. Applicant has canceled claims 1-9 without prejudice for disclaimer. Applicant has added new independent claims 10-17 to differently describe embodiments of the disclosure of the instant application. To the extent that these rejections might

be deemed to still apply to the claims as newly-amended, they are respectfully traversed for at least the following reasons. Applicant notes that newly-added independent claims 10-17, each of which is directed to a light measuring method, are based on the original claims 3 and 4.

Applicant respectfully submits that new claims 10 and 11 define an embodiment shown in Fig. 5, respectively. The new claim 10 is a combination claim of the original claims 1, 3 and 5, and the new claim 11 is a combination claim of the original claims 1, 4 and 5. In addition, as shown in Fig. 5, each of the new claims 10 and 11 further defines the new feature that the light shielding part (1) covers the one end opening of the outer frame part (10), and the new feature that the outer wall of the outer frame part (10) is in contact with the inner wall of the container (400).

Applicant respectfully submits that new claims 12 and 13 define an embodiment shown in Fig. 6, respectively. The new claim 12 is a combination claim of the original claims 2, 3 and 6, and the new claim 13 is a combination claim of the original claims 2, 4 and 6. In addition, as shown in Fig. 6(d), each of the new claims 12 and 13 further defines the new feature that one of the light shielding parts (1) covers the one end opening of the associated outer frame part (20), and the new feature that the outer wall of the one of the outer frame parts (20) is in contact with the inner wall of the associated well (550).

Applicant respectfully submits that new claims 14 and 15 define an embodiment shown in Fig. 11, respectively. These new claims 14 and 15 mainly differ from the above new claims 10 and 11 in the point that the masking member (100') itself functions as a light shielding part. The new claim 14 is a combination claim of the original claims 3 and 8, and the new claim 15 is a combination claim of the original claims 4 and 8. In addition, as shown in Fig. 11(c), each of

the new claims 14 and 15 further defines the new feature that the masking member (100') covers the opening of the container (600), and the new feature that the container (600) has positioning means (630) and the bottom surface of the masking member (100') is in contact with the upper surface of the positioning means (630).

Applicant respectfully submits that new claims 16 and 17 define an embodiment shown in Fig. 12, respectively. These new claims 16 and 17 mainly differ from the above new claims 12 and 13 in the point that the masking member (100') itself functions as a light shielding part. The new claim 16 is a combination claim of the original claims 3 and 9, and the new claim 15 is a combination claim of the original claims 4 and 9. In addition, as shown in Fig. 12(d), each of the new claims 16 and 17 further defines the new feature that one of the masking members (100') covers the opening of the associated well, and the new feature that each of the well has positioning means (730) and the bottom surface of the one of the masking member (100') is in contact with the upper surface of the associated positioning means (730).

Applicant respectfully submits that while Krahn teaches, as shown in Figs. 6 and 7, the separating layer (10) with liquid permeability and a light shielding effect, Krahn does not teach, or even suggest, a concrete structure for arranging and fixing such a separating layer (10). In contrast thereto, the claimed invention has a structure for contacting the masking member (light shielding part) with the container (well) by using a specific structure of the outer frame part or the container (well). Therefore, Applicant respectfully submits that the claimed invention can improve the light shielding effect. In addition, the masking member (or light shielding part) covers the opening of the container (or one end opening of the outer frame part), and therefore the claimed invention can even further improve the light shielding effect.

Applicant respectfully submits that while Cottingham teaches that light from the measurement object is measured at the upper side of the cap (18), Cottingham does not teach, or even suggest, a light shielding member covering the opening of the cap (18).

In the structure of Root, Applicant respectfully submits that the outer wall of the well (20) and the inner wall of the bottom well 78 are not in contact with each other to any extent.

Accordingly, Applicant believes that the claimed invention is patentable over the cited references.

Accordingly, Applicant respectfully asserts that the rejections under 35 U.S.C. § 102(b) should be withdrawn because none of the above-applied references do not teach or suggest each feature of newly-added independent claims 10-17 of the instant application. As pointed out in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim." Thus, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)."

### **CONCLUSION**


In view of the foregoing, Applicant submits that the pending claims are in condition for allowance, and respectfully request reconsideration and timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution. A favorable action is awaited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573.

This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

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Respectfully submitted,

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